

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 11,076

IN THE MATTER OF:

Served January 14, 2008

ALEM MESFIN, Trading as AM)	Case No. MP-2006-201
TRANSPORTATION, Suspension and)	
Investigation of Revocation of)	
Certificate No. 1233)	

This matter is before the Commission on respondent's failure to respond to Order No. 10,716, served August 23, 2007.

I. BACKGROUND

Under the Compact, a WMATC carrier may not engage in transportation subject to the Compact if the carrier's certificate of authority is not "in force."¹ A certificate of authority is not valid unless the holder is in compliance with the Commission's insurance requirements.²

Commission Regulation No. 58 requires respondent to insure the revenue vehicles operated under Certificate No. 1233 for a minimum of \$1.5 million in combined-single-limit liability coverage and maintain on file with the Commission at all times proof of coverage in the form of a WMATC Certificate of Insurance and Policy Endorsement (WMATC Insurance Endorsement) for each policy comprising the minimum.

Certificate No. 1233 was rendered invalid on December 19, 2006, when the \$1.5 million primary WMATC Insurance Endorsement on file for respondent terminated without replacement. Order No. 10,147, served December 19, 2006, noted the automatic suspension of Certificate No. 1233 pursuant to Regulation No. 58-02, directed respondent to cease transporting passengers for hire under Certificate No. 1233, and gave respondent thirty days to replace the cancelled endorsement and pay the \$50 late fee due under Regulation No. 67-03(c) or face revocation of Certificate No. 1233.

Respondent submitted a \$1.5 million primary WMATC Insurance Endorsement on January 26, 2007, and paid the \$50 late fee on May 15, 2007. The effective date of the new endorsement is February 1, 2007. This means that respondent was without insurance coverage for forty-four days, from December 19, 2006, through January 31, 2007.

Under Commission Rule No. 28, respondent is required to verify that he ceased transporting passengers for hire under Certificate No. 1233 as directed by Order No. 10,147. Order No. 10,517, served June 1, 2007, accordingly gave respondent thirty days to verify that he ceased operations as of December 19, 2006. Inasmuch as

¹ Compact, tit. II, art. XI, § 6(a).

² Compact, tit. II, art. XI, § 7(g).

respondent's general tariff covers van service rendered to the general public and to clients of the District of Columbia Department of Health, Medical Assistance Administration (DC Medicaid), respondent's verification was to be corroborated by evidence from respondent's general business records and by confirmation from DC Medicaid.

II. RESPONSE AND ORDER TO SHOW CAUSE

Respondent produced copies of business records responsive to Order No. 10,517 and a written statement stating that, except for some "personal limo business", respondent had not operated since being notified that his insurance was cancelled. But respondent did not produce any confirmation from DC Medicaid that respondent had ceased its van operations, and there is nothing in the record to show that respondent has any passenger carrier authority other than Certificate No. 1233 under which it would have been lawful to conduct limousine business while Certificate No. 1233 was suspended/invalid.

Accordingly, Order No. 10,716 gave respondent thirty days to show cause why the Commission should not assess a civil forfeiture against respondent, and/or revoke Certificate No. 1233, for knowingly and willfully violating Article XI, Section 6(a), of the Compact, Regulation No. 58, and the orders issued in this proceeding by conducting operations under an invalid/suspended certificate of authority and failing to produce a statement from DC Medicaid. Respondent has yet to reply.

III. ASSESSMENT OF FORFEITURE AND REVOCATION OF AUTHORITY

A person who knowingly and willfully violates a provision of the Compact, or a rule, regulation, requirement, or order issued under it, or a term or condition of a certificate shall be subject to a civil forfeiture of not more than \$1,000 for the first violation and not more than \$5,000 for any subsequent violation.³ Each day of the violation constitutes a separate violation.⁴

The Commission may suspend or revoke all or part of any certificate of authority for willful failure to comply with a provision of the Compact, an order, rule, or regulation of the Commission, or a term, condition, or limitation of the certificate.⁵

The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.⁶ The terms "willful" and "willfully" do not mean with evil purpose or criminal intent; rather, they describe conduct marked by careless disregard whether or not one has the right so to act.⁷

³ Compact, tit. II, art. XIII, § 6(f).

⁴ Compact, tit. II, art. XIII, § 6(f)(ii).

⁵ Compact, tit. II, art. XI, § 10(c).

⁶ *In re Westview Med. & Rehab. Servs., P.C. Inc.*, No. MP-07-070, Order No. 10,882 (Nov. 2, 2007); *In re Handi-Pro Transp., Inc.*, No. MP-07-060, Order No. 10,817 (Oct. 10, 2007); *In re Special People Transportation, LLC*, No. MP-06-103, Order No. 10,683 (Aug. 8, 2007).

⁷ Order Nos. 10,882; 10,817; 10,683.

Respondent has offered no explanation for failing to produce a statement from DC Medicaid and no explanation for operating a limousine without authority and while uninsured. Accordingly, we will assess a forfeiture of \$250 for failing to produce the DC Medicaid statement⁸ and \$250 for operating while suspended and uninsured.⁹ In addition, we shall revoke Certificate No. 1233.¹⁰

Because this matter has been ripe for decision since September 22, 2007, the annual report and annual fee for 2007 shall be waived, unless and until otherwise ordered.¹¹

THEREFORE, IT IS ORDERED:

1. That pursuant to Article XIII, Section 6(f), of the Compact, the Commission hereby assesses a civil forfeiture against respondent in the amount of \$500 for knowingly and willfully violating Article XI, Section 6(a), of the Compact, Regulation No. 58, and the orders issued in this proceeding.

2. That respondent shall pay to the Commission within thirty days of the date of this order, by money order, certified check, or cashier's check, the sum of five hundred dollars (\$500).

3. That the 2007 annual report and annual fee for Carrier No. 1233 shall be waived unless and until otherwise ordered.

4. That pursuant to Article XI, Section 10(c), of the Compact, Certificate of Authority No. 1233 is hereby revoked for respondent's willful failure to comply with Article XI, Section 6(a), of the Compact, Regulation No. 58, and the orders issued in this proceeding.

5. That within 30 days from the date of this order respondent shall:

- a. remove from respondent's vehicle(s) the identification placed thereon pursuant to Commission Regulation No. 61;
- b. file a notarized affidavit with the Commission verifying compliance with the preceding requirement; and
- c. surrender Certificate No. 1233 to the Commission.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS YATES AND CHRISTIE:



William S. Morrow, Jr.
Executive Director

⁸ See Order No. 10,683 (assessing \$250 for failure to produce DC Medicaid statement and timely produce other records).

⁹ See Order No. 10,882 (assessing \$250 where number of days of unlawful operations indeterminable); Order No. 10,817 (same).

¹⁰ See Order No. 10,882 (revoking authority for operating while suspended and underinsured); Order No. 10,817 (same).

¹¹ See *In re M C T Charter Tours Inc.*, No. MP-06-096, Order No. 10,349 (Mar. 23, 2007) (annual fee waived where delay in issuing revocation order not fault of carrier).